MISCELLANY.

PUBLIC CHARACTERS AND THE RIGHT OF PRIVACY.--It is a source of satisfaction that the decision of Justice Davy in *Roberson* v. *Rochester Folding-Box Co.*, at the special term of the New York Supreme Court for Monroe county (July, 1900, 65 N. Y. Sup. 1109), has elicited general approval from the press, both secular and professional. The plaintiff was, according to all forms of definition, an absolutely *private* person. She was simply a young woman of great personal beauty, with nothing to distinguish her from other persons in private life similarly favored by nature. The defendant assumed to use a likeness of her, which was readily recognizable, as a trade-mark in its business. A clearer and more flagrant invasion of the right of privacy, if such a right exist, could not be imagined. Judge Davy very properly held that an injunction would lie.

The learned judge expressly refused to follow the decision of the Supreme Court of Michigan in *Atkinson* v. *Doherty*, 80 N. W. 285. Although this Michigan case embodied—as did the celebrated case of *Schuyler* v. *Curtis*, in the New York courts—an attempt on the part of a surviving relative to protect alleged rights of privacy of the dead, the Michigan court in its reasoning went further than was necessary for the decision upon such point and took very decided ground against the existence of a right of privacy even in a living person. At the time of the rendition of the Michigan decision we remarked that that court went too far and might well have recognized a right of privacy in favor of living persons enforceable by injunction.

The present decision by Mr. Justice Davy is distinguishable from *Schuyler* v. *Curtis*, 147 N. Y. 434, because, in the first place, the action is by a living person, not by the representatives of a dead person. We have uniformly taken the ground that it would necessarily involve judicial legislation to grant injunctions, at the instance of surviving relatives, to protect the right of privacy of the dead. So far as we know, it has never been proposed to bring an action of this character in the name of an executor or administrator. Assuredly, the right involved is not one of property. When it comes to allowing mere relatives to prosecute a suit, the courts would be apt to be confronted with differences of sentiment among the relatives, some perhaps favoring posthumous commemoration of their kinsman and others opposing it. We have always doubted whether it could be recognized as a legitimate province, even of a court of equity, to administer such a purely discretionary function.

Moreover, there were strong grounds for viewing Mrs. Schuyler as a *public* and not a private character. According to the loose definition of a *public character* usually given in judicial opinions the classification is confined to persons who have distinguished themselves as authors, artists, politicians or statesmen. Nevertheless, in *Corliss* v. *Walker Co.*, 57 Fed. Rep. 434, it was held that Mr. Corliss, celebrated as the builder of the great engine exhibited at the Centennial Exhibition held at Philadelphia in 1876, was a public man. We do not believe that the adjective "public" is susceptible of very exact definition. Any person who has performed substantial service to the public to such an extent that large numbers of persons consider his, or her, character worthy of commemoration as a public

ideal, should legitimately be regarded as a *public* character. Because of her philanthropic services to humanity, Mrs. Schuyler was a *public* character, in the same sense as the late George Peabody, who had never, so far as we know, written a book, or held a public office, but to commemorate whose memory statues were erected on both sides of the Atlantic.

Miss Roberson, the plaintiff in the present case, was not a public character in any possible sense of the term. It was an outrage to make use of her physiognomy as a means of advertising the defendant's business against her will, and we believe that the theoretical analogies of the law support Judge Davy's decision, and that it is perfectly practicable, without legislation, to administer the remedy which he has granted in favor of a living person. Some of his general *dicta*, however, on the subject of public and private characters are open to criticism. The judicial assumption too often is that if a person become a public character he *ipso facto* surrenders all rights of privacy. We have on several occasions combatted this thoroughly fallacious idea. Suppose, for instance, an enterprising firm of distillers should assume to use a portrait of the Hon. Neal Dow, who has held public office in Maine, and is therefore undoubtedly a public character, as a trade-mark to promote the sale of a certain brand of whiskey. It would be an obvious outrage to compel a man to suffer the use of his portrait for advertising a traffic which he considers infamous and against which his whole public service has been directed. Under the liability to general exploitation of public characters loosely expressed in most of the opinions, we do not see how Mr. Dow would be entitled to an injunction. The logical and just rule on this subject was well expressed by presiding Justice Van Brunt in *Schuyler* v. *Curtis*, 64 Hun. 594, as follows: "It is undoubtedly true that by occupying a public position or by making an appeal to the public a person surrenders such part of his personality or privacy as pertains to and affects the positions he fills or seeks to occupy; but no further."—*New York Law Journal.*

ASSOCIATION OF AMERICAN LAW SCHOOLS.—At a meeting of the representatives of a number of the leading law schools of the United States, held at Saratoga, in August last, contemporaneously with the meeting of the American Bar Association, an association was formed for the purpose of the improvement of legal education throughout the country. The articles of association are printed below.

The conditions of membership, as set forth in these articles, are four, viz.: (1) An entrance examination, with a standard equivalent to a high school course of study; (2) A course of study covering two years, of at least thirty weeks each, with at least ten hours of class work each week for each student, to be increased to three years after the year 1905; (3) Degrees to be conferred only after examination; (4) The school to own, or have access to, a library containing the reports of the State in which the school is located and of the United States Supreme Court.

These conditions are extremely simple, and, except in one particular, will be easily met by any law school doing serious and honest work.

The feature to which many law schools, especially those of the South, will find difficulty in accommodating themselves, is the requirement of a three years course after the year 1905. Such a requirement seems to fix a false standard of fitness for the bar, in exacting that the student's name shall be on the rolls

of a law school, with no conditions as to the amount of work he shall have done, or as to the familiarity he must possess with the principles of the profession to which he seeks entrance.

Unless our information is at fault, herein lies the chief difference between the standards of the reputable law schools of the South, and those of the North and West. In the former, the fitness of the student for graduation is measured rather by his legal attainments, as ascertained by rigorous examinations, with the requirement of a high standard of excellence—and no student who fails to attain this standard is graduated, though he may have attended twice the required number of years. At the University of Virginia, with whose customs we are most familiar, there is, indeed, a required period of attendance—two years—but no significance whatever is attached to the mere fullfilment of this requirement. The candidate for the degree must undergo a rigorous examination upon every subject in the course, and must attain to a standard, on every examination, of at least eighty-three *per centum*. Failing in this, he is "pitched," whether he be in his second, third or fourth year. The consequence is, that before the degree is finally won, a considerable percentage of the second year students are compelled to attend a third year, and a smaller percentage even a fourth. Nor are there wanting instances of those who have failed in their fourth year.

On the other hand, in the leading schools of the North and West, we have been credibly informed that the chief requirement for graduation is attendance upon the prescribed course, with but little regard to the real attainments of the candidate for the degree. In a recent conversation with the distinguished dean of one of the largest and most reputable of the Western law schools, we were informed that the refusal to confer the degree upon one of its students who had attended the prescribed three years course, was practically unknown.

With this striking difference between the standards of the Southern law schools and those of the North and West, it seems to us of the South that it is a little ungracious for the representatives of the latter sections to combine, and to declare their standard as only proper, with the admonition that unless we of the South shall adopt that standard, we shall be debarred from affiliation with them, and be classified as disreputable.

We have no objection to the requirement of a three years course. On the contrary, we are willing to admit, other things being equal, that a three years course is preferable. But with the varying standards which the prescribed conditions of the Association admit, we assert that a two years course, with a high standard, is far preferable to a three years course with a standard so low that it debars no one. Such a standard these conditions permit; and this looseness in testing the student's attainments is not merely theoretically permissible, but actually prevails among many of the schools already admitted to fellowship in the Association.

Again, the financial condition of the Southern people renders such a requirement a pecuniary burden, which many of its young men can ill afford to bear.

To sum up the situation: The newly formed Association of American Law Schools admits to membership law schools offering courses of study of three years of thirty weeks each, with class room work of ten hours per week, and with a standard of graduation as low as fifty *per centum*, or lower. It excludes schools whose courses extend through two years of forty weeks each, with required class-room

work of twelve to fourteen hours per week, and with the requirement of a minimum grade of eighty-three *per centum* for graduation. The one requires a total of 900 hours of class room work, and permits the graduation of every student on the rolls. The other requires 960 to 1120 hours of class room work, and graduates only those students who have attained a high degree of excellence, and whose diplomas are certificates, not that they have attended a law school for three years, but that they have actually mastered the prescribed course by diligent application.

Assuming each to have equal facilities, few unbiased minds will assent to the proposition that the former class are doing more for the cause of legal education than the latter, or that the latter ought to be suppressed and the former encouraged.

We are not authorized to speak for the Southern law schools, or any of them, but we are sure the better class of them are anxious to further the cause of legal education, and anxious to unite with the other reputable law schools of the country to that end. They are anxious also, no doubt, to be thought worthy to associate with the best to be found in the Association of American Law Schools. But we protest that the cause of legal education is not furthered by a mere minimum requirement of three years attendance, graduation to follow upon the attainment of any grade that any school may see fit to fix as its standard. And we repeat that it is ungracious to put beyond the pale of respectability those law schools that require only two years of attendance, but whose standards for graduation weed out every unfit candidate—and yet to admit into the Association such schools as we have described, merely because of the requirement of a three years course.

The test of the standing of a law school should be, not how many books its students are required to read, or how many lectures they must hear, or how many years their names must have been on the class rolls, but what legal knowledge must they possess, as a condition precedent to a certificate that they are fit candidates for professional honors and emoluments.

The following are the articles of association referred to:

"The undersigned law schools in the United States, represented by delegates duly appointed by their respective faculties, do hereby form an association to be called the Association of American Law Schools, and establish the following as its articles of association:

"*First.* The object of the Association is the improvement of legal education in America, especially in the law schools.

"*Second.* The Association shall meet annually at the time and place at which the American Bar Association meets. The executive committee may call special meetings at such time and place as the committee may select; thirty days notice of such meeting shall be given by the secretary to all members of the Association, and the purpose of the meeting shall be stated in the notice.

"*Third.* The law schools having delegates at this meeting and signing these articles before July 1, 1901, shall be members of the Association, provided such schools shall comply with article sixth.

"*Fourth.* Each member of the Association may send to the meetings delegates not exceeding four from each law school.

"*Fifth.* At all meetings of the Association, the voting shall be by delegates,

unless some delegate requests that any vote shall be taken by schools, in which case it shall be taken by schools, each school having one vote.

"*Sixth.* Law schools may be elected to membership at any meeting by vote of the Association, but no law school shall be so elected unless it complies with the following requirements:

"1. It shall require of candidates for its degree the completion of a high school course of study, or its equivalent. The equivalent may be determined by the law school faculty upon certificates issued under public authority, or by the authorities of an institution of advanced learning. In the absence of these the applicant shall be required to pass an examination in studies equivalent to those required of high school graduates. *Provided*, that this requirement shall not take effect until September, 1901.

"2. The course of study leading to its degree shall cover at least two years of thirty weeks per year, with an average of at least ten hours required class-room work each week for each student: provided, that after the year 1905 members of this Association shall require a three years course.

"3. The conferring of its degree shall be conditioned upon the attainment of a grade of scholarship ascertained by examination.

"4. It shall own, or have convenient access to during all regular library hours, a library containing the reports of the State in which the school is located and of the United States Supreme Court.

"*Seventh.* Any school which shall fail to maintain the requirements provided for in article sixth, or such standard as may hereafter be adopted by resolution of the Association, shall be excluded from the Association by a vote at the general meeting, but may be reinstated at a subsequent meeting on proof that it is then *bona fide* fulfilling such requirements.

"*Eighth.* The officers of this Association shall be a president and a secretary-treasurer, who shall be chosen from among the delegates at each annual meeting, and each of whom shall hold office until his successor is elected.

"*Ninth.* At each annual meeting there shall be chosen from among the delegates three persons to be members of the executive committee, who with the president and secretary shall form such committee. The secretary of the Association shall be secretary of the committee.

"*Tenth.* The executive committee shall have charge of the affairs of the Association and is especially entrusted with seeing that the requirements of articles sixth and seventh are complied with. All complaints shall be addressed to the executive committee, and shall be filed at least ninety days before the annual meeting of the Association. The committee shall investigate all complaints and report its findings, with such recommendations as it shall think proper, to the Association for its action, and shall make a report at the annual meeting. This provision shall not, however, prevent any matter being taken up and passed upon by the Association, except that no law school shall be excluded from the Association under the seventh article unless the executive committee has given it thirty days notice that it has in the opinion of that committee failed to comply with the provisions of the sixth or seventh article.

"*Eleventh.* Applications for membership shall be addressed to the secretary, accompanied by evidence that the school applying fulfills the requirements of articles sixth and seventh. The executive committee shall examine the applica-

tion, and report to the association whether the applicant has fulfilled the requirements. Applications for membership shall be made at least ninety days before the meeting of the association.

"*Twelfth.* The executive committee may conduct its business by correspondence.

"*Thirteenth.* The officers and other members of the executive committee may be re-elected, but no school shall be represented on the executive committee for more than three years in succession, except that the secretary-treasurer may be re-elected indefinitely.

"*Fourteenth.* The annual assessment on each school shall be ten dollars, payable in advance, and any school which shall have failed to pay its assessment during the year shall be dropped from the Association, but may be reinstated by vote of the Association, upon payment of arrears.

"*Fifteenth.* These articles may be changed at any annual meeting; the vote on such change shall be by schools, and no change shall be adopted unless it is voted for by two-thirds of the schools represented, nor unless it is voted for by at least one-third of all the members of the Association—provided that no motion for an amendment shall be considered unless a copy of such proposed amendment be filed with the secretary at least ninety days before the meeting and a copy thereof sent forthwith by the secretary to each member."

The officers for the year 1900–1901, are: President, James B. Thayer, Cambridge, Mass.; secretary-treasurer, Ernest W. Huffcut, Ithaca, N. Y.; executive committee, the president, *ex officio;* the secretary-treasurer, *ex officio;* J. Crawford Biggs, Durham, N. C.; William P. Rogers, Bloomington, Ind.; George M. Sharp, Baltimore, Md.